

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION _____
CIVIL ACTION NO. _____

COMMONWEALTH OF KENTUCKY
ex rel. ALBERT B. CHANDLER, III,
Attorney General

PLAINTIFF

v.

COMPLAINT

SMITH WHOLESALE CO., INC.

DEFENDANT

Serve: Hon. John Y. Brown, III
Secretary of State
700 Capital Avenue
Frankfort, Kentucky 40601

* * * * *

Comes the Plaintiff, COMMONWEALTH OF KENTUCKY *ex rel.* Albert B. Chandler, III, Attorney General (“the Commonwealth”), and for its Complaint against the Defendant, SMITH WHOLESALE CO., INC., states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Pursuant to KRS 131.622(2), the Attorney General is authorized to bring this civil action to enforce the requirements of KRS 131.604 *et seq.*, 2003 Ky. Acts ch. 194, “An Act relating to Title XI of the Kentucky Revised Statutes, making an appropriation therefore and declaring an emergency” (hereinafter “the Act”).

2. The Defendant, SMITH WHOLESALE CO., INC. (hereinafter “Smith”), is a corporate entity organized under the laws of Tennessee. It is headquartered in Johnson City, Tennessee.

3. Pursuant to Rule 4, Kentucky Rules of Civil Procedure, and KRS 454.210(2)(a), this Court has personal jurisdiction over the Defendant because it is licensed as a Kentucky wholesaler. It contracted to sell, sold, and profited from the sale of cigarettes to retailers in the Commonwealth, thereby transacting business within the Commonwealth and availing itself of the privilege of conducting activities within the Commonwealth. Upon information and belief, these sales continue to occur in the Commonwealth.

4. Venue is properly in this Court pursuant to KRS 454.210(4).

FACTUAL BACKGROUND

5. SMITH is licensed as a cigarette wholesaler by the Revenue Cabinet. As such, it is authorized to purchase cigarettes from the manufacturer or sole distributor, or other wholesalers, for the purpose of selling cigarettes to retailers in Kentucky. SMITH is a licensed “distributor” as defined in KRS 131.604(2), and a licensed “stamping agent” as defined in KRS 131.604(5).

6. In 2003, the General Assembly enacted a statute requiring the Attorney General's Office to create an approved list of manufacturers and provide the list to the Revenue Cabinet for publishing as the directory of tobacco products and manufacturers (“Directory”), listing the tobacco product manufacturers and brands that were compliant with Kentucky law. KRS 131.610. Pursuant to KRS 131.612, after the publication of the Directory, with respect to cigarettes intended for sale in Kentucky, the stamps required by KRS 138.146 can lawfully be affixed only to those products listed on the Directory.

7. On July 3, 2003, the Revenue Cabinet sent a notice to SMITH and all other registered cigarette wholesalers, stating that the Directory had been published on the Revenue Cabinet's website at revenue.ky.gov, and also attaching a printed copy of the Directory.

8. SMITH affixed stamps to cigarettes not listed on the Tobacco Product Directory after July

6, 2003.

9. Specifically, SMITH affixed stamps to 82,800 “Optiva” brand cigarettes in August 2003; and 103,600 “Optiva” brand cigarettes in September 2003. “Optiva” brand is not on the Tobacco Product Directory.

10. SMITH knew of the new law and its obligation to comply with it because it had received written notice of the publication of the Directory from the Revenue Cabinet.

CAUSE OF ACTION

11. The Commonwealth incorporates by reference the allegations contained in Paragraphs 1 through 10 herein.

12. Defendant affixed stamps to a tobacco product not listed on the Directory after July 6, 2003, in violation of KRS 131.612.

REQUEST FOR RELIEF

The Commonwealth respectfully asks that this Court:

A. Find that SMITH violated KRS 131.612, and order any profits, gain, gross receipts, or other benefit from the violation be relinquished and paid to the state treasurer for deposit in the tobacco control special fund created by KRS 131.626(2);

B. Enter an injunction restraining SMITH from further violations of KRS 131.612 and compelling compliance therewith;

C. Order that the Commonwealth is entitled to its costs and fees as provided by KRS 131.622(2) and 131.626(1), including the Commonwealth's cost of investigation; and

D. Award such other relief as the Court deems appropriate.

Respectfully submitted,

ALBERT B. CHANDLER III
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